



Billing Code 3510-JT-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 150127079-5079-01]

Foreign Availability Determination: Anisotropic Plasma Dry Etching Equipment

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice of Foreign Availability Determination.

SUMMARY: This notice announces that the Under Secretary for Industry and Security has determined that foreign availability exists for anisotropic plasma dry etching equipment controlled for national security reasons under Export Control Classification Number (ECCN) 3B001.c on the Commerce Control List. This foreign availability determination is in response to a submission from the Semiconductor Equipment and Materials International (SEMI) industry association. The Bureau of Industry and Security (BIS) has provided a proposal to the Department of State to submit to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies to remove the 3.B.1.c control from the Arrangement's Dual-Use List. This determination was made pursuant to Section 5(f) of the Export Administration Act of 1979, as amended, and Part

768 of the EAR.

ADDRESSES: BIS welcomes comments on this foreign availability determination on an ongoing basis. You may submit comments by any of the following methods:

- Email: *EtchComments@bis.doc.gov*. Include the phrase “Anisotropic Plasma Dry Etching Equipment Determination” in the subject line;
- Mail: Orestes Theocharides, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Room 1093, 1401 Constitution Avenue N.W., Washington, D.C. 20230; or
- Fax to (202) 482–5361. Include the phrase “Anisotropic Plasma Dry Etching Equipment Determination” in the subject line.

FOR FURTHER INFORMATION CONTACT: Gerard J. Horner, Office of Technology Evaluation, Department of Commerce, Room 1093, 1401 Constitution Avenue N.W., Washington, D.C. 20230, Telephone: (202) 482-2078; [email: gerard.horner@bis.doc.gov](mailto:gerard.horner@bis.doc.gov).

SUPPLEMENTARY INFORMATION:

Background

Section 5(f) of the Export Administration Act of 1979, as amended (EAA), authorizes the Secretary of Commerce to conduct foreign availability assessments to examine and evaluate the effectiveness of U.S. export controls on certain items that are controlled for national security reasons under the Export Administration Regulations (EAR) (15 CFR parts

730-774). The Bureau of Industry and Security (BIS) has been delegated from the Secretary of Commerce the responsibility for conducting these assessments and issuing a final foreign availability determination. Part 768 of the EAR sets forth the procedures related to foreign availability assessments.

On July 16, 2014, BIS received a foreign availability submission from the Semiconductor Equipment and Materials International (SEMI) industry association, a group of companies that does business all over the world and that serve the manufacturing supply chain for the micro- and nano-electronics industries. SEMI's July 16, 2014 submission asserts the foreign availability of anisotropic plasma dry etching equipment in China. This type of semiconductor etching equipment is controlled for national security reasons under Export Control Classification Number (ECCN) 3B001.c on the Commerce Control List (CCL). It is used in the process for producing dual-use semiconductor devices such as flash memories, microwave monolithic integrated circuits, transistors, and analog-to-digital-converters. These devices are used in civil and military applications such as radars, point-to-point radio communications, microprocessors, cellular infrastructure, and satellite communications. The national security control BIS has applied to anisotropic plasma dry etching equipment implements the Wassenaar Arrangement's Dual-Use List 3.B.1.c control. SEMI's submission asserts that anisotropic plasma dry etch equipment of comparable quality to that subject to control under ECCN 3B001.c is available-in-fact from China in sufficient quantities to render the U.S. export control of the equipment ineffective.

After reviewing SEMI's submission, on September 8, 2014, BIS published in the Federal

Register a Notice of Foreign Availability Assessment: Anisotropic Plasma Dry Etching Equipment (79 FR 53166), which formally initiated a foreign availability assessment. To carry out the assessment, BIS conducted interagency meetings with stakeholders, obtained input from the exporting community, and visited, in China, a producer of anisotropic plasma dry etching equipment meeting the 3B001.c control parameters, and a foundry using a Chinese-produced anisotropic plasma dry etching tool. As a result of BIS's analysis of the data collected through the assessment, BIS recommended that I determine that the etching equipment of ECCN 3B001.c capability is available-in-fact to China, from a non-U.S. (Chinese) source, in sufficient quantity, and of comparable quality so that continuation of the existing national security export control would be ineffective in achieving its purpose.

After reviewing the assessment and recommendation, I determined that anisotropic plasma dry etching equipment controlled for national security reasons under ECCN 3B001.c on the CCL is foreign available to China. Consequently, BIS has submitted a proposal to the Department of State to remove the Wassenaar Arrangement's Dual-Use List 3.B.1.c control.

DATED: February 4, 2015.

Eric L. Hirschhorn

Under Secretary of Industry and Security

